

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Lance Wickner,

Civil No. 12-1452 (DWF/HB)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Robert Bender, Thomas Cherro,
Jeff Laine, Kevin Dreher,
Jason Furey, and Tyler Rosen,

Defendants.

This matter is before the Court upon Defendants Robert Bender, Thomas Cherro, Jeff Laine, Kevin Dreher, Jason Furey, and Tyler Rosen's ("Defendants") objections (Doc. No. 52) to Magistrate Judge Franklin L. Noel's July 19, 2018 Report and Recommendation (Doc. No. 49) insofar as it recommends that Defendants' motion to dismiss Plaintiff Lance Wickner's Amended Complaint be denied.

The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Defendants' objections. In the Report and Recommendation, the Magistrate Judge determined, taking Plaintiff's allegations as true and affording all inferences in his favor, that he has alleged enough plausible facts to state claims for excessive force and deliberate indifference to a serious medical need, and further that Defendants failed to meet their burden to show that they are entitled to qualified immunity. Finally, the Magistrate Judge concluded that Plaintiff has alleged sufficient facts to proceed with a

claim for punitive damages. Defendants object to the Magistrate Judge's Report and Recommendation, arguing that Plaintiff fails to state claims for excessive force or deliberate indifference to serious medical needs. Moreover, Defendants argue that even if Plaintiff states valid claims, Defendants are entitled to qualified immunity and that Plaintiff's punitive damages claim should be dismissed.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). After this review, the Court finds no reason that would warrant a departure from the Magistrate Judge's recommendations. The Magistrate Judge correctly concluded that Plaintiff has sufficiently pleaded claims for excessive force and deliberate indifference to a serious medical need. Moreover, Defendants failed to establish at this stage of the litigation that they are entitled to qualified immunity or that Plaintiff's claim for punitive damages cannot proceed. Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Defendants Robert Bender, Thomas Cherro, Jeff Laine, Kevin Dreher, Jason Furey, and Tyler Rosen's objections (Doc. No. [52]) to Magistrate Judge Franklin L. Noel's July 19, 2018 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Franklin L. Noel's July 19, 2018 Report and Recommendation (Doc. No. [49]) is **ADOPTED**.

3. Defendants Robert Bender, Thomas Cherro, Jeff Laine, Kevin Dreher, Jason Furey, and Tyler Rosen's motion to dismiss Plaintiff Lance Wickner's Amended Complaint (Doc. No. [40]) is **DENIED**.

Dated: September 11, 2018

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge